Clarence Spight Equipment Leasing Company d/b/a Clarence Spight Contractor *and* Eastern Missouri Laborers' District Council affiliated with the Laborers' International Union of North America, AFL–CIO. Case 14–CA–22311

September 17, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on February 10, 1993, the General Counsel of the National Labor Relations Board issued a complaint on March 11, 1993, against Clarence Spight Equipment Leasing Company d/b/a Clarence Spight Contractor, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that the Respondent has violated the Act since about September 24, 1992, by failing to execute an 8(f) collective-bargaining agreement containing the provisions of the collective-bargaining agreement entered into between the Charging Party and the Site Improvement Association. The complaint further alleges that the Respondent failed to do so despite executing an interim agreement in which it agreed to be bound by and to execute the collective-bargaining agreement. On March 18, 1993, counsel for the General Counsel received from the Respondent a copy of the complaint issued by the Regional Director, with the words ''No labors used'' handwritten across its face.

On March 19, 1993, counsel for the General Counsel mailed to the Respondent a certified letter advising the Respondent that its answer in its present form was deficient because Section 102.20 of the Board's Rules and Regulations requires that each allegation of the complaint be specifically admitted, denied, or explained. The letter further advised that if a sufficient answer were not filed by close of business March 25, 1993, a Motion for Summary Judgment would be made.

On March 21, 1993, counsel for the General Counsel received a telephone call from the Respondent. Counsel for the General Counsel again advised the Respondent that, if a sufficient answer was not filed by March 25, 1993, a Motion for Summary Judgment would be made. The Respondent advised that it would most likely not file an amended answer.

On April 5, 1993, counsel for the General Counsel filed a motion to strike respondent's answer and for summary judgment for failure to file a sufficient answer. On April 7, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion to Strike and for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board.'' Section 102.20 also states that an answer should specifically admit, deny, or explain each of the facts alleged in the complaint unless the respondent is without knowledge, in which case it shall so state.

We agree with the General Counsel that the Respondent's purported answer, consisting of the return of the complaint with the words ''No labors used'' handwritten across its face, does not constitute a sufficient answer under the Board's rules because it does not admit, deny, or explain each of the allegations of the complaint.[1] Furthermore, no contention is raised by the Respondent's words on the returned complaint that warrants denial of the Motion for Summary Judgment. Even assuming, arguendo, that the Respondent is claiming that it did not hire laborer unit employees, that is not a defense to a failure to execute an agreed-upon 8(f) collective-bargaining agreement.[2]

The undisputed allegations in the General Counsel's Motion for Summary Judgment disclose that the Respondent was given opportunities to file a sufficient answer to the complaint, but failed to do so. The Respondent did not respond to the Notice to Show Cause, and therefore has failed to adequately explain its failure to file a proper answer. In the absence of good cause being shown for the failure to file a sufficient answer, all the allegations of the complaint are deemed to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment. On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Missouri corporation, engaged in the hauling of materials in the building and construction industry at its St. Louis, Missouri facility. During the 12-month period ending February 28, 1993, the Respondent purchased and received goods valued

[1] Accordingly, we grant the General Counsel's motion to strike the Respondent's submission.

[2] See *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988). See also *Ryan Heating Co.*, 297 NLRB 619 (1990).

in excess of $50,000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On May 5, 1992, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union pursuant to Section 8(f) of the Act by executing an interim agreement agreeing to execute and be bound by a collective-bargaining agreement containing the provisions of any collective-bargaining agreement entered into by the Site Improvement Association and the Union. By the terms of the interim agreement, the Respondent is bound by the terms of the current collective-bargaining agreement between the Union and the Site Improvement Association, which is effective by its terms from May 1, 1992, to May 1, 1996.

The unit of employees (the unit), set forth in the collective-bargaining agreement described above is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. For the period of May 1, 1992, to May 1, 1996, based on Section 9(a) of the Act, the Union is the limited exclusive collective-bargaining representative of the unit.

On about May 1, 1992, the Union and the Site Improvement Association reached complete agreement on the terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement between the Union and the Respondent. Since about September 24, 1992, the Union has requested the Respondent to execute a written contract containing the agreement described above. Since about September 24, 1992, the Respondent has failed and refused to execute the agreement. We find that the Respondent, by the conduct described above, has failed and refused to bargain in good faith with the limited exclusive collective-bargaining representative of its employees in the appropriate unit in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing to execute the above-described collective-bargaining agreement as requested by the Union, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to execute the above-described collective-bargaining agreement and to make unit employees whole for any losses they may have suffered as a result of the Respondent's unlawful failure and refusal to execute the agreement, with lost earnings and interest to be computed in the manner prescribed by *Ogle Protection Service*, 183 NLRB 682 (1970), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The Respondent, Clarence Spight Equipment Leasing Company d/b/a Clarence Spight Contractor, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Eastern Missouri Laborers' District Council affiliated with the Laborers' International Union of North America, AFL–CIO, by failing and refusing to execute a written contract incorporating the provisions of the collective-bargaining agreement negotiated by the Union and the Site Management Association.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union, execute the above-described collective-bargaining agreement.

(b) Make unit employees whole, with interest, for any loss of earnings they may have suffered by reason of the Respondent's failure and refusal to execute the collective-bargaining agreement in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its offices in St. Louis, Missouri, copies of the attached notice marked ''Appendix.''[3] Copies of the attached notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with the Eastern Missouri Laborers' District Council affiliated with the Laborers' International Union of North America, AFL–CIO by failing and refusing to execute a written contract incorporating the provisions of the collective-bargaining agreement negotiated between that Union and the Site Improvement Association.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, at the Union's request, execute the above-described collective-bargaining agreement.

WE WILL make unit employees whole, with interest, for any loss of earnings they may have suffered by reason of our failure and refusal to execute the collective-bargaining agreement between us and the Union.

CLARENCE SPIGHT EQUIPMENT LEASING COMPANY D/B/A CLARENCE SPIGHT CONTRACTOR